UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,339	06/26/2001	Christopher Harry Austen	AUS920010329US1	2235

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EXAMINER
LE, DIEU MINH T

ART UNIT	PAPER NUMBER
2114	*H*

DATE MAILED: 01/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/891,339	AUSTEN ET AL.
	Examiner	Art Unit	
	Dieu-Minh Le	2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>07 October 2002</u> .

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-28</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-28</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>16 October 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____ .

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
        application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)   4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   5) ☐ Notice of Informal Patent Application (PTO-152)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> .   6) ☐ Other: .

DETAILED ACTION

1.   This Office Action is in response to the communication

filed 10/07/02 in application 09/891,339.

2.   Claims 1-28 are again presented for examination.

3.   Claim 1 is objected to because of the following

informalities: Line 5, "first partition" need to be clarified

since there is no second or third partition in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs

of 35 U.S.C. 102 that form the basis for the rejections under

this section made in this Office action:

> A person shall be entitled to a patent unless –
> (b) the invention was patented or described in a printed publication in this or
> a foreign country or in public use or on sale in this country, more than one
> year prior to the date of application for patent in the United States.

4.   **Claims 1-6, 10-19, 23-28 are rejected under 35 U.S.C. §**

102(b) as being unpatentable Mehta et al. (US Patent 6,065,139

hereafter referred to as Mehta).

As per claim 1:

Mehta explicitly teaches:

- A method for service processor surveillance [fig. 1,

abstract, col. 1, lines 23-25] comprising:

- receiving a service processor status request from a first

partition [fig. 1, col. 2, lines 8-10];

- performing a surveillance test for the service processor

if the time period has elapsed [fig. 1, col. 2, lines 10-13

and col. 5, lines 8-12];

- updating an official response for the surveillance test

[col. 2, lines 25-28 and col. 4, lines 16-18];

- returning a status for the service processor to the

partition [col. 2, lines 16-17 and col. 4, lines 9-10].

This is clearly shown that Mehta's teaching capabilities

are corresponding to Applicant's invention.

As per claims 2-3:

Mehta explicitly teaches:

- A method for service processor surveillance [fig. 1,

abstract, col. 1, lines 23-25] comprising:

- reading/writing surveillance information [fig. 1-2, col.

2, lines 8-10];

- determining whether the service processor has written to

the surveillance information [fig. 1-2, col. 2, lines 13-

17].

This is clearly shown that Mehta's teaching capabilities

are corresponding to Applicant's invention.

As per claims 4-6:

Mehta explicitly teaches:

- A method for service processor surveillance [fig. 1,

abstract, col. 1, lines 23-25] comprising:

- a surveillance byte in nonvolatile random access memory

[fig. 1, col. 3, lines 8-11];

- performing error handling if the service processor is in

error [fig. 1, col. 3, lines 37-40 and col. 4, lines 20-

22];

- the status comprising official response [col. 2, lines 2-

4 and col. 4, lines 8-10].

This is clearly shown that Mehta's teaching capabilities

are corresponding to Applicant's invention.

As per claim 10:

Mehta explicitly teaches:

- A method for service processor surveillance [fig. 1,

abstract, col. 1, lines 23-25] comprising:

- receiving a service processor status request from a first

partition [fig. 1, col. 2, lines 8-10];

- determining whether a predetermined time period has

elapsed [col. 2, lines 13-16];

- performing a surveillance test for the service processor

if the time period has elapsed [fig. 1, col. 2, lines 10-13

and col. 5, lines 8-12];

- returning a status for the service processor to the

partition [col. 2, lines 16-17 and col. 4, lines 9-10].

This is clearly shown that Mehta's teaching capabilities

are corresponding to Applicant's invention.

As per claims 11-12:

Mehta explicitly teaches:

- A method for service processor surveillance [fig. 1,

abstract, col. 1, lines 23-25] comprising:

- reading/writing to surveillance information [fig. 1-2,

col. 2, lines 8-10];

- determining whether the service processor has written to

the surveillance information [fig. 1-2, col. 2, lines 13-

17].

This is clearly shown that Mehta's teaching capabilities

are corresponding to Applicant's invention.

As per claim 13:

Mehta explicitly teaches:

- A method for service processor surveillance [fig. 1,

abstract, col. 1, lines 23-25] comprising:

- a surveillance byte in nonvolatile random access memory

[fig. 1, col. 3, lines 8-11].

This is clearly shown that Mehta's teaching capabilities

are corresponding to Applicant's invention.

As per claims 14-19:

Due to the similarity of claims 14-19 to claim 1-6 except

for an apparatus for service processor surveillance means (i.e.,

receiving means, surveillance means, updating means, returning

means, etc…) instead for the method for service processor

surveillance steps (i.e., receiving steps, surveillance steps,

updating steps, returning steps, etc...; therefore, these claims
are also rejected under the same rationale applied against
claims 1-6. **In addition, all of the limitations have been noted
in the rejection as per claims 1-6.**

As per claims 23-26:

Due to the similarity of claims 23-26 to claim 10-13 except
for an apparatus for service processor surveillance means (i.e.,
receiving means, determination means, surveillance means,
returning means, etc...) instead for the method for service
processor surveillance steps (i.e., receiving steps, determining
steps, surveillance steps, returning steps, etc...; therefore,
these claims are also rejected under the same rationale applied
against claims 10-13. **In addition, all of the limitations have
been noted in the rejection as per claims 10-13.**

As per claims 27-28:

This claim is the same as per claims 1, 10, 14, and 23. The
only minor different is that these claims are directed to a
**computer program product, in a computer readable medium, for
service processor surveillance** instead of the method and
apparatus for service processor surveillance described in claims
1, 10, 14, and 23, respectively. However, it would have been

obvious to one having ordinary skill in the art at the time the

invention was made to realized that a computer program product

is a necessary item for such service processor surveillance

system. Since the processor, memory, service processor obviously

need a means for instruction or code means resided within the

computer program product for performing the computer

surveillance operation including the failure detection and

correction (e.g., performing surveillance of processors and

other computer devices). Therefore, these claims are also

rejected under the same rationale applied against claims 1, 10,

14, and 23.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this

Office action:

(a) A patent may not be obtained though the invention is not

identically disclosed or described as set forth in section 102

of this title, if the differences between the subject matter

sought to be patented and the prior art are such that the

subject matter as a whole would have been obvious at the time

the invention was made to a person having ordinary skill in the

art to which said subject matter pertains. Patentability shall

not be negatived by the manner in which the invention was made.

6.   This application currently names joint inventors. In

considering patentability of the claims under 35 U.S.C. 103(a),

the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered

therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to

point out the inventor and invention dates of each claim that

was not commonly owned at the time a later invention was made in

order for the examiner to consider the applicability of 35

U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art

under 35 U.S.C. 103(a).

7.   Claims 7-9 and 20-22 are rejected under 35 U.S.C. § 103(a)

as being unpatentable Mehta et al. (US Patent 6,065,139

hereafter referred to as Mehta).

As per claims 7-9:

        Mehta explicitly teaches:

        - A method for service processor surveillance [fig. 1,

        abstract, col. 1, lines 23-25] comprising:

- a surveillance byte in nonvolatile random access memory

[fig. 1, col. 3, lines 8-11];

- performing error handling if the service processor is in

error [fig. 1, col. 3, lines 37-40 and col. 4, lines 20-

22];

- the status comprising official response [col. 2, lines 2-

4 and col. 4, lines 8-10].

Mehta does not explicitly disclose:

- comparing the official response to a partition official

response, setting the partition official response to be

equal to the official response.

However, Mehta does address capabilities of:

- determining if a surveillance period/interval has been

reached [col. 3, lines 58-60] and system check and

surveillance report [col. 3, lines 60-65];

- architecturing functions for system surveillance

including setting monitoring system operation [col. 4,

lines 2-7 and 25-30].

It would have been obvious to an ordinary skill in the art

at the time of the invention to realize the Mehta's

architecturing surveillance function as being the comparing and

setting the official response and the partition official

response in supporting the system for surveillance of computer

system operations. This is because Mehta does reply on the pulse

period or heartbeat intervals or the "responses" to determining

whether the service processor performed correctly. This is

further obvious to apply the Mehta's system

initialization/initial program along with the stored

surveillance policy setting [col. 4 lines 25-30], the computer

system operation, more specifically, the service processor can

support the surveillance system uninterruptedly to enhancing the

resource sharing, processing availability and performance

throughput.

As per claims 20-22:

Due to the similarity of claims 20-22 to claim 7-9 except

for an apparatus for service processor surveillance means (i.e.,

comparing responses means, setting responses means, etc...)

instead for the method for service processor surveillance steps

(i.e., comparing responses steps, setting responses steps,

etc...); therefore, these claims are also rejected under the same

rationale applied against claims 7-9. **In addition, all of the**

limitations have been noted in the rejection as per claims 7-9.

Conclusion

8.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9.   A shortened statutory period for response to this action is set to expired THREE (3) months, ZERO days from the date of this letter. Failure to respond within the period for response will cause the application to be abandoned. 35 U.S.C. 133.

10.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (703) 305-9408. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703)305-9713. The fax phone number for this Group is (703)746-7240.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Any response to this action should be mailed to:
        Commissioner of Patents and Trademarks
        Washington, D.C. 20231
    or faxed to:
        (703)872-9306, (for formal communications
        intended for entry)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

DIEU-MINH THAI LE
PRIMARY EXAMINER
ART UNIT 2114

DML
1/22/04